

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNION MUTUAL FIRE INSURANCE COMPANY,

Plaintiff,

-v-

MARIO TEJADA, PABLO BRITO,

Defendants.

20 Civ. 9166 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has reviewed plaintiff Union Mutual Fire Insurance Company's ("Union Mutual") request to take a pretrial deposition of defendant Mario Tejada ("Tejada"), *see* Dkt. 76, as well as Tejada's opposition to the request, *see* Dkt. 79. Union Mutual argues that "a deposition of Tejada is both warranted and necessary to explore his version of events, which was previously not known" before Union Mutual moved for summary judgment. Dkt. 76 at 2.

The Court denies Union Mutual's request. Union Mutual stated in the pre-motion conference before its motion for summary judgment that it had elected to forego the familiar tool of deposing Tejada during the pretrial discovery period, presumably in reliance on a statement of Tejada taken by its investigator. *See* Dkt. 53 (Plaintiff's counsel: "[W]e never took any depositions and we have no intention of doing a deposition of the defendant."). Union Mutual thus forewent the opportunity to obtain a pretrial preview, under oath, of Tejada's version of events. The Court discerns no basis, and Union Mutual has provided none, on which to now permit Union Mutual to take a deposition that it had voluntarily foregone during the designated discovery period.

The case will proceed to a bench trial. The parties are directed to file, by March 3, 2023, a joint pretrial order and motions *in limine*. These submissions shall be made in accordance with the Court's Individual Rules and Practices for non-jury trials, including the rules for testimony of party witnesses. Any oppositions to the motions *in limine* shall be due March 10, 2023. The Court will thereafter set the dates for a final pretrial conference and the trial.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: February 6, 2023
New York, New York